

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:01-CR-69-1-F

UNITED STATES OF AMERICA

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v.

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LINO ZEPEDA GOMEZ,
Defendant.

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ORDER

This matter was submitted to the undersigned on November 8, 2010, for ruling on a motion, filed on May 12, 2008, [DE-34] for modification of sentence pursuant to 18 U.S.C. § 3582(c)(2). Because the motion purported to rely on Amendment 709 to the advisory Sentencing Guidelines, the motion was placed with the myriad of prisoner motions seeking a reduction of sentence based on the retroactive crack amendment. A closer examination of the motion led the Federal Public Defender and, eventually, court administrative personnel to conclude that the relief Gomez seeks is not related to the retroactive crack amendment.

Gomez admits he has filed successive § 2255 motions which were denied without prejudice to seek authorization from the Fourth Circuit Court of Appeals. He did not obtain such authorization.

By the instant motion, Gomez contends that his criminal history category was incorrectly calculated at sentencing, arguing that an October 18, 2000, California driving offense should not have been counted. He also contends that a 2007 Ninth Circuit case applies to him such that the court should exercise its discretion to re-sentence him below the applicable Sentencing Guideline range, based on his post-conviction conduct.

The court has carefully reviewed Gomez's motion, the attachments thereto and the record of this case. Having done so, the court concludes that Gomez is not entitled to relief from his sentence. Therefore, Gomez's Motion for Modification of Sentence [DE-34] is DENIED.

SO ORDERED.

This the 8th day of November, 2010.



JAMES C. FOX
Senior United States District Judge